

HOUSE BILL NO. 564

INTRODUCED BY M. NOLAND, J. HINKLE, A. REGIER, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ATTORNEYS AND REAL ESTATE TRANSACTIONS; REMOVING THE EXEMPTIONS FOR ATTORNEYS IN THE REGULATION OF ESCROW BUSINESSES ACT; AND AMENDING SECTION 32-7-103, MCA."

WHEREAS, Thornton v. Whitefish Credit Union, 2019 MT 138N, 396 Mont. 549, 455 P.3d 435, demonstrates a need to have attorneys in the state be subject to the provisions of the Regulation of Escrow Businesses Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-7-103, MCA, is amended to read:

"32-7-103. Exemptions. (1) The provisions of this part do not apply to the following:

~~(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;~~

~~(b)~~(a) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

~~(c)~~(b) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

~~(d)~~(c) a person licensed pursuant to Title 32, chapter 9, part 1, as a mortgage broker, mortgage lender, or mortgage servicer, except that a licensed mortgage broker, mortgage lender, or mortgage servicer that provides escrow services in relation to contracts, agreements, or transactions besides residential mortgage loan agreements also must be licensed under this part as an escrow business;

~~(e)~~(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution shall supply a copy of the most recently prepared audit or examination to the

department upon the department's request.

~~(f)~~(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if the broker is performing an act in the course of or incidental to a single real estate transaction for which a real estate license is required;

~~(g)~~(f) any person furnishing escrow services under the order of a court; and

~~(h)~~(g) a loan closer if the loan closer:

(i) is employed by an exempt financial institution; or

(ii) is an independent contractor acting only as a courier and who does not take possession of the funds for deposit or subsequent disbursement.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of this part.

(3) A person that is not exempt under this section who violates any part of this chapter is subject to the penalties provided in 32-7-124."

- END -